

REMARKS

These remarks are submitted in response to the Office Action of March 24, 2003. In the Office Action, the Examiner objected to the drawings under 37 C.F.R. § 1.83(a) and objected to the specification as being unclear. The Examiner rejected claims 1-3, 6-11, 15-18, and 20 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 3,316,950 to Fleischer et al. ("Fleischer"). The Examiner also rejected claims 1-6, 9-12, 14-16, 18, and 21 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent 6,485,177 to Bell ("Bell"). The Examiner also rejected claims 3 and 4 under 35 U.S.C. § 103(a) as being unpatentable over Fleischer in view of U.S. Patent 6,076,968 to Smith et al. ("Smith"). Finally, the Examiner rejected claims 13 and 19 under 35 U.S.C. § 103(a) as being unpatentable over Fleischer in view of U.S. Patent 6,270,255 to Kaufman et al. ("Kaufman").

In this amendment, Applicants have amended the drawings without adding new matter. Based on the amended drawings and the explanation provided below, Applicants respectfully submit that the specification is now sufficiently clear and understandable.

In this amendment, Applicants have cancelled claim 6, amended claims 1, 2, 5, 7, 9, 12, 13, 15, 17, 18, 19 and 21, explained why the claims, as now amended, are patentable over the cited art, and added new claims 22-46, which are distinguishable over the cited art. The amendments to the claims and the new claims are supported by the specification and drawings as filed. Applicant respectfully requests a notice of allowance for the pending claims.

1. The amendments to the drawings are supported by the specification as filed and are now sufficiently clear.

In the Office Action, the Examiner objected to the drawings under 37 C.F.R. § 1.83(a) as failing to illustrate a third panel having a gusseted bottom, as recited in claim 14. Applicants have added a hidden line at the bottom of FIG. 1 and repositioned the reference number "16" that references the third panel 16. Support for this amendment can be found at page 3, line 25 of the specification as filed, which reads, "[t]he first panel 12 and the second panel 14 are further affixed to the third panel 16 so that the third panel 16 forms a gusseted bottom between the first and second panels 12 and 14." Applicants respectfully submit that no new matter has been added and the amendment obviates the objection.

In the Office Action, the Examiner objected to FIG. 7 as being unclear because it illustrates piercing point 24 as being located in a portion of the bag that is not part of the seam. Also, the Examiner objected to the written description as being unclear with respect to the column extension recited on page 5, lines 16-18.

To clarify the drawings so they more fully correspond to the specification, Applicants have amended FIGS. 1 and 7. Specifically, the hidden lines 41a, 41b that define the column have had their ends joined to the seal 13 between the first and second panels 12, 14, thereby forming the areas 45, 46 that have “a wider seal 13 between the first panel 12 and second panel 14.” *Specification as filed, p. 5, ll. 10-14.*

The specification states, “[s]ides 41a and 41b of the column 40 help to guide the piercing straw 26 to the piercing point 24 without snagging or damaging the interior of the column 40. Furthermore, as illustrated in FIG. 1, sides 41a and 41b of the column 40 may extend further beyond the piercing point 24 to guide the straw 26 into the compartment 11 even after piercing the piercing point 24.” *Specification as filed, p. 5, ll. 14-18.* Also, “[w]hen the straw 26 is utilized to pierce the piercing point 24, it does not actually pierce through one of the laminate 17 layers, but actually separates the sealed together panels 12 and 14.” *Specification as filed, p. 6, ll. 9-11.* Finally, “[a]s illustrated in FIG. 7, the column 40 may further include a second piercing point 52. The second piercing point 52 may be utilized as a second barrier between the exterior of the pouch 10 and the compartment 11. The second piercing point 52 may be formed in substantially the same manner as piercing point 24.” *Specification as filed, p. 8, ll. 22-25.* Thus, as is clear from the specification as filed, and as note by the Examiner, that the column is defined by the gap in seam 13. Therefore, it is proper to show the ends of hidden lines 41a, 41b (i.e., the lines that define the gap in seam 13) connected to the line forming the wider seam 13 between the first and second panels 12, 14 at the wide areas 45, 46. Thus, Applicants respectfully submit that the amendments to FIGS. 1 and 7 have obviated the objections and have added no new matter.

2. **The 35 U.S.C. § 102(b) rejection based on Fleischer should be withdrawn because, unlike Applicants' claimed invention, Fleischer's exterior aperture is not "formed by the exterior end of" its seams and, as a result, Fleischer's column does not immediately guide a straw to the piercing point.**

In the Office Action, the Examiner rejected claims 1-3, 6-11, 15-18, and 20 under 35 U.S.C. § 102(b) as being anticipated by Fleischer. Applicants have cancelled claim 6 and amended claims 1, 2, 7, 9, 15, 17 and 18.

A claim is anticipated only if each and every element as set forth in the claim is found in a single prior art reference. MPEP § 2131. Fleischer discloses a receptacle of plastic with a discharge passage 7 (i.e., column) that is formed by two side seams 3, 4, a top seam 5, and a bottom seam 6. *Fleischer, col. 2, ll. 15-19; All Figures*. The discharge passage 7 has an exterior aperture 8 (i.e., opening) that provides access from the exterior of the receptacle into the discharge passage 7. *Fleischer, col. 2, ll. 20-25; All Figures*.

Fleischer's exterior "aperture 8 is located in the outer wall." *Fleischer, col. 2, ll. 23-24; All Figures*. As can be seen in Figs. 1, 3 and 5-8 of Fleischer, its exterior aperture 8 does not contact any of the seams 3, 4, 5, 6 forming the discharge passage 7. Thus, Fleischer does not disclose "an opening formed by the exterior end of the first and second seams," as recited in independent claims 1 and 15.

Because Fleischer's exterior aperture 8 is not "formed by the exterior end of" its seams 3, 4, 5, 6, a gap exists between the edges of the exterior aperture 8 and the seams 3, 4, 5, 6. *Fleischer, Figs. 1, 3 & 5-8*. Therefore, unlike Applicants' invention, as recited in independent claims 1, 15 and 21, when a pointed straw is inserted into the aperture 8, the straw tip may displace laterally within the discharge passage 7 before it encounters a side seam 3, 4. As a result, the Fleischer's straw tip is not immediately guided to the piercing point 11 by the seams 3, 4, 5, 6. This makes it difficult for a child, and others with limited motor skills, to easily pierce the piercing point. Consequently, because Fleischer's exterior aperture 8 is not "formed by the exterior end of" its seams 3, it does not provide a nice advantage offered by Applicants' claimed invention.

For at least these reasons, Fleischer fails to anticipate each and every element as set forth in amended independent claims 1 and 15. Also, since pending claims 2, 3 and 7-11 depend on independent claim 1, and pending claims 16-18 and 20 depend on independent claim 15, the above arguments apply *a fortiori* to the rejection of these dependent claims. Therefore, Applicants respectfully request that the anticipation rejection of pending claims 1-3, 7-11, 15-18, and 20 be reconsidered and withdrawn.

Support for the “opening [being] formed by the exterior end of the first and second seams” may be readily seen in FIG. 1 at approximately 44, and FIG. 7.

3. **The 35 U.S.C. § 102(b) rejection based on Bell should be withdrawn because, unlike Applicants’ claimed invention, Bell’s first and second seams do not have portions that are “substantially parallel” and, as a result, Bell’s column allows a straw to deviate from the preferred angle of approach as it approaches the piercing point.**

In the Office Action, the Examiner rejected claims 1-6, 9-12, 14-16, 18, and 21 under 35 U.S.C. § 102(e) as being anticipated by Bell. Applicants have cancelled claim 6 and amended claims 1, 2, 5, 9, 12, 15, 18, and 21.

A claim is anticipated only if each and every element as set forth in the claim is found in a single prior art reference. MPEP § 2131. Bell discloses a flexible pouch for dispensing liquids, the pouch having an unsealed perimeter edge region 28 with sides 37, 38 (i.e., seams) that are “mirror images of one another oriented to extend inwardly at an angle, toward one another relative to edge region 28a, within the range of 25° to 70°.” *Bell, col. 7, 36-39, FIGS. 2-4, 7 & 11*. Thus, Bell does not disclose a column with “a first seam and a second seam, wherein . . . a portion of the first seam is substantially parallel to a portion of the second seam,” as recited in independent claims 1 and 15 and similarly recited in independent claim 21.

Because Bell’s sides 37, 38 are not “substantially parallel,” Bell is more likely to allow a straw to deviate from a preferred angle of approach when the straw tip is approaching the piercing point. Because Applicants’ invention as claimed has a column with “a portion of the first seam [that] is substantially parallel to a portion of the second seam,” the column more readily maintains the straw tip at a preferred angle of approach. This can make it less difficult for a child, and others with limited motor skills, to easily pierce the piercing point.

Consequently, because Bell's sides 37, 38 are not "substantially parallel," Bell does not provide a nice advantage offered by Applicants' claimed invention.

For at least these reasons, Bell fails to anticipate each and every element as set forth in amended independent claims 1, 15 and 21. Also, since pending claims 2-5, 9-12, and 14 depend on independent claim 1, and pending claims 16 and 18 depend on independent claim 15, the above arguments apply *a fortiori* to the rejection of these dependent claims. Therefore, Applicants respectfully request that the anticipation rejection of pending claims 1-5, 9-12, 14-16, 18, and 21 be reconsidered and withdrawn.

Support for "a first seam and a second seam, wherein . . . a portion of the first seam is substantially parallel to a portion of the second seam," may be readily seen in FIG. 1 at 41a and 41b, FIG. 2 at 40, and FIG. 7.

4. The Fleischer/Smith and the Fleischer/Kaufman combinations fail to make obvious claims 3 and 4 and claims 13 and 19, respectively, because the combinations do not teach or suggest the claimed "opening formed by the exterior end of the first and second seams."

In the Office Action, the Examiner rejected claims 3 and 4 under 35 U.S.C. § 103(a) as being unpatentable over Fleischer in view of Smith. The Examiner also rejected claims 13 and 19 under 35 U.S.C. § 103(a) as being unpatentable over Fleischer in view of Kaufman.

In order for a combination of references to establish a case of *prima facie* obviousness, three requirements must be met:

1. there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings;
2. there must be a reasonable expectation of success; and
3. the prior art references when combined must teach or suggest all the claim limitations.

MPEP §2142.

As explained above, Fleischer fails to teach or suggest “**an opening formed by the exterior end of the first and second seams,**” as recited in independent claim 1, on which claims 3, 4 and 13 depend, and as recited in independent claim 15, on which claim 19 depends. Neither Smith nor Kaufman remedy this deficiency. For at least this reason, the Fleischer/Smith and the Fleischer/Kaufman combinations fail to make obvious claims 3 and 4 and claims 13 and 19, respectively. Therefore, Applicants respectfully request that the obviousness rejections of pending claims 3, 4, 13, and 19 be reconsidered and withdrawn.

5. New claims 22-46 are supported by the specification as filed and are patentable over the cited art.

Applicants have submitted new claims 22-46, which are directed to an embodiment of the invention where “the column [is] open at an external end, [and] sealed at an internal end,” “the seal of the internal end [being] formed by the same method as the seal used to seal the first surface to the second surface.” Applicants respectfully submit that the cited references do not teach or suggest these aspects of the new claims. For example, unlike Applicants’ invention as recited in new independent claims 22 and 34, Bell’s “peel seal region” is made by a different method from its “permanent seal regions.” *Bell, col. 10, ll. 28-67; col. 11, 1-2*. Also, unlike Applicants’ invention as claimed in new independent claims 22 and 34, Fleischer’s column does not have an open external end. For at least these reasons, the new claims are patentable over Bell, Fleischer and the other cited references.

New claims 22-46 are supported by the specification and drawings as filed. Support for the “the seal of the internal end [being] formed by the same method as the seal used to seal the first surface to the second surface,” as recited in new independent claim 22 and similarly recited in new independent claim 34, can be found in the specification as filed at page 7, lines 18-23.

CONCLUSION

In view of the above amendments and preceding remarks, it is respectfully urged that the rejection of the claims be reconsidered and withdrawn and that pending claims 1-5 and 7-46 be allowed. However, should any issue remain unresolved, the Examiner is invited to telephone the undersigned to expedite the allowance.

Respectfully submitted,

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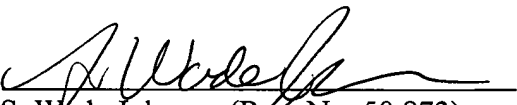
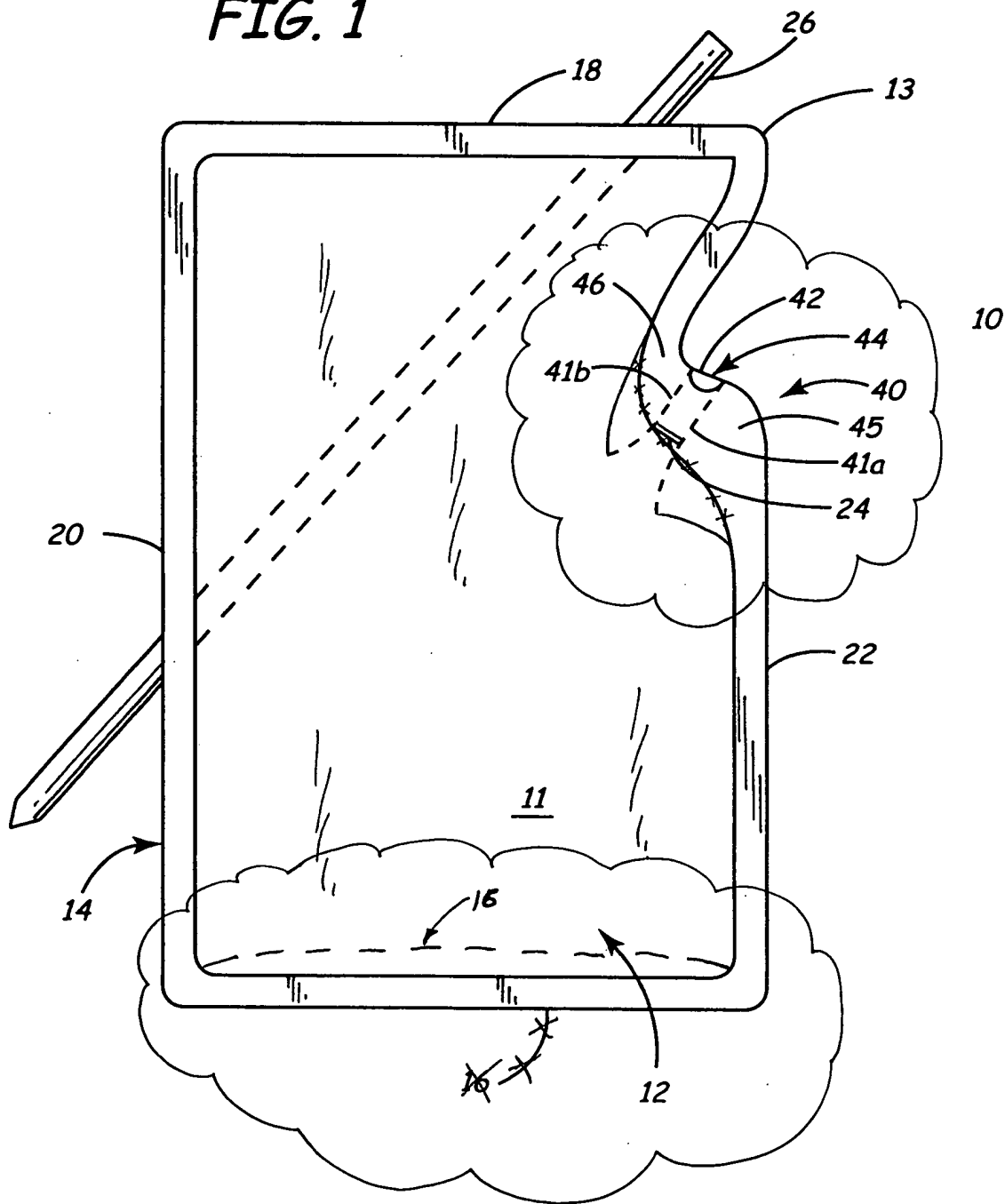
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FIG. 1





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FIG. 7

